

# EXHIBIT 1


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## 3M Wins First Bair Hugger Case; 8 More Cases Prepare For Trial

By [Brent Augustine](#) | May 30th, 2018

The first question to the jury, in summary:

“Did plaintiff prove that Bair Hugger was unreasonably dangerous *and* that a safe alternative was available?” The alternative, the Court ruled, had to be another air-blowing device to meet defective design requirements (it could not be HotDog®, another electric warming system, or a water-based system).

The jury’s answer: “No.”

With that, the jury determined that 3M’s Bair Hugger patient warming device would not be held responsible for a South Carolina man’s orthopedic infection. The trial of 76-year-old Louis Gareis’s claim was the first of more than

> [3M Wins First Bair Hugger Case; 8 More Cases Prepare For Trial](#)

> [Journal of Hospital Infection: Forced-Air Warming An Infection-Control “Hazard” in Implant Surgery](#)

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4,500 cases filed against Bair Hugger in federal courts across the United States.

This specific case was more challenging for the plaintiffs than others will be. The surgery occurred in 2010—*predating* the research showing the dangers of Bair Hugger in orthopedic implant surgery. As a result, the judge dismissed 14 of the 15 claims: all of the claims that 3M was negligent for selling a device that research showed to be dangerous. The plaintiff's lawyers were only able to use a small fraction of the evidence available to them.

Plaintiff Louis Gareis had to prove not only that Bair Hugger caused his infection, but also that an alternative blowing-air device was available that would not have caused his infection. An alternative air device that doesn't produce waste heat was difficult to show.

Gareis' attorneys said an appeal will be filed.

Eight more cases have been selected for trial. The next trial will begin on December 3, 2018. Other trials are likely to follow quickly thereafter.

Bair Hugger blows heated air onto the surgical patient in a attempt to avoid surgical hypothermia, which can have severely negative consequences. The 4,500 victims of orthopedic implant infections allege that Bair Hugger's hot air escapes from under the surgical drape, mobilizing pathogens near the floor of the operating room and lifting them into the sterile field.

Plaintiffs' lawyers rely on 12 studies published in respected medical journals confirming that forced-air warming devices like Bair Hugger can contaminate the sterile field. One such study, involving more than 1,400 patients in the United Kingdom, showed a 74% reduction in orthopedic implant infections after Bair Hugger warming was discontinued.

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Dr. Scott Augustine, inventor of Bair Hugger and the first to alert clinicians of its dangers, answers questions about the verdict below:

- > [Infection Risk from Forced-air Warming Considered; Study on Bacterial Contamination Recommended](#)
- > [Nursing Journal: Forced-Air Warmers May Allow Pathogens to Contact Surgical Wounds](#)

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**Q:** Does this jury verdict decide all 4,500?

**A:** Absolutely not. In theory, each of the 4,500+ cases could be separately tried in the states where they were originally filed. The first few cases—perhaps a dozen or more— are called “bellwether cases.” They are intended to give the parties an idea of the strength of the claims...and the possible scope of the damages.

**Q:** Is Mr. Gareis’s claim typical of all the other cases?

**A:** Not at all. The surgery occurred in November 2010— well before research was published regarding the risks of forced-air warming in orthopedic surgery. The Judge severely restricted evidence to what was known at the time of the surgery.

**Q:** If Gareis isn’t typical, why was it tried first? Seems like it was great advantage for 3M.

**A:** Bellwether cases are selected by a complicated process. Mostly, it was luck of the draw.

**Q:** Since Mr. Gareis lost, will the other 4,500+ cases be dropped?

**A:** Incredibly unlikely. No lawyer expects to win every case, no matter how good the facts. The history of mass tort litigation suggests that the verdicts are often mixed. We have no special insight here, but we expect that the plaintiffs’ lawyers plan to try many, many cases.

Star Tribune story: <http://www.startribune.com/jury-sides-with-3m-in-trial-over-patient-warming-device/484104211/>

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